



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

Albany NY 12212-5126

DECISION OF THE BOARD

Mailed and Filed: SEPTEMBER 27, 2022

IN THE MATTER OF:

Appeal Board No. 625376

PRESENT: RANDALL T. DOUGLAS, MEMBER

The Department of Labor issued the initial determination holding the claimant ineligible to receive benefits, effective May 16, 2022, on the basis that the claimant was not available for employment. The claimant requested a hearing.

The Administrative Law Judge held a telephone conference hearing at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There was an appearance by the claimant. By decision filed August 5, 2022 (), the Administrative Law Judge sustained the initial determination.

The claimant appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: On or about March 12, 2022, the claimant was separated from her employment for reasons not in issue. In April 2022, the claimant started attending school from Monday through Thursday, 9AM to 2PM. She was available for and looked for work after 2PM on these days, and at all times on Fridays, Saturdays, and Sundays. The claimant filed a claim for benefits that was made effective May 16, 2022. In a Summary of Interview, dated June 9, 2022, the claimant informed the Department of Labor that she was in school during the above days and hours. The summary does not reflect any advice from the Department of Labor regarding her job search or how her school attendance would affect her eligibility for benefits.

OPINION: The credible evidence establishes that the claimant was available for

work after 2PM on Mondays through Thursdays and on all Fridays, Saturdays, and Sundays. However, the record has no evidence that the claimant was ever advised by the Department of Labor that she would be considered unavailable to work and ineligible for benefits if she was not available to work full time and restricted her availability to work around her school hours (See Field Memorandum 1-2001). As the claimant was not so advised, the claimant was not provided with an opportunity to adjust her availability for employment during the period in issue. A claimant is not responsible for failing to conform to a standard or rule of which she was not informed. Accordingly, we conclude that the claimant was available for work during the period at issue.

DECISION: The decision of the Administrative Law Judge is reversed.

The initial determination, holding the claimant ineligible to receive benefits, effective May 16, 2022, on the basis that the claimant was not available for employment, is overruled.

The claimant is allowed benefits with respect to the issues decided herein.

RANDALL T. DOUGLAS, MEMBER